

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	MDL Docket No. 2800
In re: Equifax, Inc. Customer)	Case No.: 1:17-md-2800-TWT
Data Security Breach Litigation)	
)	ALL ACTIONS
)	

CASE MANAGEMENT ORDER NO. 2

On December 11, 2017, the Court entered Case Management Order No. 1 (Doc. No. 23) (“CMO 1”), governing this multidistrict proceeding. In accordance with CMO 1, the parties’ counsel submitted their preliminary reports, *ex parte*, on January 5, 2018, and, through their counsel, conducted an initial conference to discuss the matters set forth in CMO 1. Based upon the agreement of counsel and for good cause shown, the Court further orders as follows:

(1) Separate Tracks for Consumer and Financial Institutions Actions.

The putative class actions consolidated in this proceeding assert claims on behalf of (1) consumers (including the 145.5 million individuals who Plaintiffs allege had their personal information compromised in the breach) and (2) financial institutions. A third type of plaintiffs – small businesses that are not included in the putative class individuals whose information was compromised in the breach –

have asserted claims in the *Kademi, LLC, et al. v. Equifax, Inc.*, 1:2017-cv-03886 (N.D. Ga., Filed 10/4/2017) and *O'Dell Properties, LLC et al. v. Equifax, Inc.*, 1:2017-cv-03618 (N.D. Ga., Filed 09/19/2017) actions. Counsel for the small business plaintiffs has agreed to work with appointed lead counsel for the consumer track to include such small business claims in any consolidated amended complaint. In the event those claims are not included in any consolidated amended complaint, the small business plaintiffs may seek leave to establish a separate track for such cases. Accordingly, to manage this multidistrict proceeding most efficiently, the Court hereby creates separate tracks for the consumer and financial institution actions. Exhibit 1A to this Order lists the actions filed on behalf of individuals. Exhibit 1B to this Order lists the actions filed on behalf of small businesses. Exhibit 2 to this Order lists the actions filed on behalf of financial institutions. If and when additional actions are filed in or transferred to this Court, the actions will be assigned to the appropriate track. The Court intends to appoint separate leadership for plaintiffs in each track. Except where it is most cost-effective and efficient to do otherwise, the Court intends for the tracks to proceed on the same discovery schedule and that counsel appointed to lead the separate tracks coordinate as closely as possible to avoid duplication of effort. The Court

further intends, however, that pleadings and motions proceed separately in each track.

(2) **Master Complaints for Each Track and Briefing on Rule 12(b)**

Motions. To facilitate the efficient handling of this multidistrict litigation, the Court directs that plaintiffs file a master consolidated complaint in each track and that dismissal motion practice in each track proceed according to the following schedule:

<u>Event</u>	<u>Consumer Track Deadline</u>	<u>Financial Inst. Track Deadline</u>
Filing Master Consolidated Complaint	60 days after lead counsel appointed	75 days after lead counsel appointed
Rule 12(b) motions	45 days after Master Consolidated Complaint filed	45 days after Master Consolidated Complaint filed
Plaintiffs' oppositions	45 days after 12(b) motion/s filed	45 days after 12(b) motion/s filed
Defendant's replies	30 days after Plaintiffs' opposition/s filed	30 days after Plaintiffs' opposition/s filed

(3) **Captions and Filing.** The parties shall file all documents on the Master Docket, Case No.: 1:17-md-2800-TWT. All documents shall bear the following caption:

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When a pleading, motion, or other document is intended to be applicable to both the consumer and financial institution tracks (and, if approved, the small business track), the words “ALL ACTIONS” shall appear immediately below “No.: 1:17-md-2800-TWT” in the caption set forth above. When a pleading, motion, or other document is intended to be applicable to only one track, the words “CONSUMER ACTIONS” or “FINANCIAL INSTITUTION ACTIONS” (or, if approved, “SMALL BUSINESS ACTIONS”) shall appear in the caption. Service of any document filed in connection with this multidistrict litigation will be sufficient if made upon all attorneys who have registered with the Court’s CM/ECF system.

No pleadings, motions, or other documents will be filed in any of the dockets that have been established for the individual cases that are part of this multidistrict litigation. The Court intends to administratively close each of the individual cases after the above-referenced Master Consolidated Complaints are filed.

(4) **Appointment of Leadership.** As discussed above and in CMO 1, the Court intends to appoint plaintiffs’ lead counsel, plaintiffs’ steering committee, and

plaintiffs' liaison counsel (or other appropriate structure) for each of the tracks. Counsel interested in being considered for appointment to one of these positions shall file an application—either individually or jointly—with the Court by February 2, 2018, addressing each of the criteria set forth in CMO 1 and Rule 23(g), and specifying the position(s) for which counsel seek appointment. If plaintiffs' counsel in any of the tracks reach an agreement among themselves regarding a proposed leadership structure, they shall file their proposal with the Court no later than February 2, 2018.

(5) **Proposed Discovery Plan and Scheduling Order.** Within thirty (30) days after appointment of plaintiffs' leadership in each track, all parties are directed to meet and confer and present to the Court a proposed discovery plan under Rule 26(f), as well as a suggested schedule under Rule 16(b) for joinder of parties, consideration of any class action allegations, motions, and trial.

(6) **Status Conferences.** The Court intends to schedule and hold status conferences approximately every six weeks. Counsel shall meet and confer in advance of each status conference and submit to the Court no later than 2:00 p.m. two (2) days before the status conference a joint agenda listing all matters to be considered.

(7) **Further Case Management Orders.** Within thirty (30) days after the Court appoints plaintiffs' leadership the parties shall meet and confer for the purpose of agreeing upon further case management orders to propose to the Court concerning: (a) exchanging initial disclosures, amending the pleadings, class certification motions, and dispositive motions; (b) a protocol to govern discovery including such matters as changes to the limitations on discovery imposed by the Rules and other means to most efficiently conduct discovery; (c) preservation of documents; (d) handling of confidential documents; and (e) a protocol for electronically stored information ("ESI"), including, identification of custodians whose information will be searched and the terms that will be used in such searches . The Court directs the parties to move expeditiously on these matters and report on their progress at the next status conference. This Order and any further Case Management Orders issued in this action shall supersede the Court's Local Rules to the extent those Rules are inconsistent with such Orders.

(8) **Joint Preliminary Report and Discovery Plan.** Having already filed the preliminary reports required by CMO 1 and having been directed by this Order to meet and confer regarding further case management orders, the parties are excused from filing the Joint Preliminary Report and Discovery Plan required by the Local Rules.

(9) **Joinder and Determination of Appropriate Parties.** The parties shall immediately notify each other and the Court if they are aware of any necessary parties who have not been joined, any party that has been improperly joined, or any party that has been inaccurately named.

(10) **Settlement.** The parties are expected to consider and discuss settlement on an ongoing basis.

(11) **Jurisdiction.** The parties agree that this Court has personal jurisdiction over cases originally filed in this Court, as well as cases that are transferred to this Court for pretrial purposes, pursuant to the Judicial Panel on Multidistrict Litigation's Transfer Order pertaining to this litigation. The parties reserve all rights with regard to the Court's Article III jurisdiction.

(12) **Document Preservation.** Pending entry of any further document preservation order (*see* Paragraph 7(c), above), the parties are directed to take reasonable steps to preserve all documents in their possession, custody, or control relating to the claims and defenses in this action. Furthermore, to protect documents in the hands of third parties relevant to this action, the parties are directed to meet and confer within fourteen (14) days after the Court appoints plaintiffs' leadership to identify potential third parties who may possess discoverable documents and to agree upon a procedure of notifying such third

parties of the necessity of preserving their documents. In the absence of an agreement between the parties upon an appropriate procedure, the Court will consider a request by plaintiffs for leave to serve document preservation subpoenas upon third parties who may have discoverable documents.

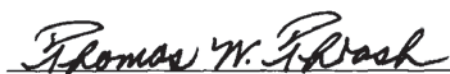
(13) **Communications with Putative Class Members.** In accordance with Local Rule 23.1(C)(2), the parties have begun conferring regarding whether proper management of this multidistrict litigation or the interests of putative class members require the entry of an order limiting communications with putative class members. The parties agree to continue to meet and confer on this issue and will provide the Court with an update at the next status conference

(14) **Inclusion of Subsequently Filed Actions.** JPML Rule 7.2(a) states: “Potential tag-along actions filed in the transferee district do not require Panel action. A party should request assignment of such actions to the Section 1407 transferee judge in accordance with applicable local rules.” Therefore, when any party becomes aware of a potential tag-along action pending in this District, they may file a notice of tag-along action on the docket of this MDL and on the docket of the potential tag-along action. The notice shall specify whether the potential tag-along action belongs in the consumer or financial institution track (and, if approved, the small business track). Any party opposing transfer and consolidation

of the potential tag-along action shall then have seven (7) days in which to object to its inclusion in this multidistrict litigation. If no objection is lodged, the action shall be consolidated herein after the seven (7) day objection period expires. If a party objects, the Court shall set a briefing schedule and determine whether transfer and consolidation are appropriate based on the parties' submissions.

(15) **MDL Website.** The Court intends to create a website for the posting of Court orders of importance in this case, which shall be located at the following URL: <http://www.gand.uscourts.gov/multi-district-litigation-cases>. The Court will request the assistance of defendant's counsel and plaintiffs' Court-appointed leadership in drafting a summary of the action for the Court website.

SO ORDERED, this 9 day of January 2018.



Thomas W. Thrash, Jr.
Chief United States District Judge

Submitted by:

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